

**United States Department of Labor
Employees' Compensation Appeals Board**

R.B., Appellant)

and) Docket No. 15-0594

**DEPARTMENT OF LABOR, MINE SAFETY &
HEALTH ADMINISTRATION, Homewood, AL,
Employer**)
Issued: July 8, 2015

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 21, 2015 appellant filed a timely appeal of a December 17, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has established that she sustained an emotional condition on March 12, 2014 in the performance of duty.

FACTUAL HISTORY

On March 21, 2014 appellant, then a 58-year-old assistant clerk, filed a traumatic injury claim alleging that on March 12, 2014 she developed stress due to her employment duties.

¹ 5 U.S.C. § 8101 *et seq.*

Appellant stated on March 12, 2014 she took mail to the front desk of the employing establishment and asked a coworker, W.M., to please take this mail out when she picked up the delivered mail. She stated, "I turned and took about two steps when she asked very aggressively 'Why you telling me that?'" Appellant responded that the task was part of the front desk duties. W.M. stated that collecting mail was not part of her duties and that appellant should perform the task herself. Appellant then asked why W.M. was being rude. She stated, "She jumped up and came over the desk, putting her finger in my face, and began yelling that I was a hypocrite – repeating it several times." Appellant asked W.M. what she had done to her. W.M. instructed appellant to look into the mirror and stated that she would see a hypocrite looking back. Appellant alleged that W.M. was waving her hands and jerking her head. She stated that W.M. continued to yell at her as she walked away.

Appellant sought out her supervisor, B.T. and relayed the conversation to him. B.T. promised to investigate the incident. Appellant left his office and heard W.M. exclaiming that she did not work for her and that she had no business telling her what to do. She denied the coworker's allegation in this conversation that she had slammed the mail down and ordered her to take the mail out. Appellant also overheard another coworker, C.C., state that she had presented her supervisors with an e-mail that appellant had sent her and stated that she did not work for her. J.D., also a coworker, stated that appellant should not have been moved from her former position and that all she had done was to cause trouble in her current position.

Appellant stated that she was a professional and did not bully her coworkers. She noted that the following day, the district manager, held a meeting and instructed the employees to "get along and treat each other as professionals." Appellant alleged that W.M. was the office bully and had mistreated other coworkers. She stated that she had very few peers in the office that would talk to her. Appellant stated that she believed that W.M., C.C., and J.D. hated her. She asserted that she believed that W.M. was capable of violence and that she frightened her on March 12, 2014. Appellant stated that she was depressed and anxious due to bullying and gossip.

Dr. Daniel A. McKeever, a psychologist, examined appellant on March 21, 2014 and found that she was totally disabled due to complex post-traumatic stress disorder as she was harassed and bullied by fellow employees. He also stated that she did not receive support from her supervisors. Dr. McKeever diagnosed clinical depression. In a form report dated March 27, 2014, he diagnosed post-traumatic stress disorder due to verbal abuse from a coworker on March 12, 2014. Dr. McKeever stated that appellant was threatened and emotionally bullied. He stated that this event caused her to emotionally fall apart and triggered post-traumatic stress disorder.

In letters dated April 2, 2014, OWCP requested additional information from appellant and the employing establishment. Appellant responded and stated that the March 12, 2014 event was much more than a raised voice conversation. She stated that W.M. jumped up and lunged at her over the desk and shoved her finger into her face. Appellant reported that W.M. began yelling very loudly that she was a hypocrite and repeated this allegation several times. She alleged that W.M. had screamed and pounded the desk with her fists at three other employees. Appellant stated that she witnessed these other incidents and was afraid that W.M. would hurt

her. She reported the statements from J.D. and C.C. after the meeting with her supervisor and added that C.C. stated that appellant and two of her coworkers, B.N. and M.W. were “a gang.”

The employing establishment responded to OWCP’s request for information on March 28, 2014 and alleged that appellant’s recitation of the events of March 12, 2014 was not completely factual. Appellant’s supervisor stated that the results of an investigation by the employing establishment found that there was an exchange of words between the employees. He suggested that appellant used profanity in her response to W.M. noting that appellant’s statement “does not indicate that she used profanity in her response to [W.M.,] and that each party had raised their voice to each other.” The supervisor stated that it was the employing establishment’s opinion that appellant had instigated the confrontation with W.M. and that W.M. responded inappropriately. He concluded that both parties involved appeared to have conducted themselves in an inappropriate manner for the workplace.

Appellant’s supervisor stated that appellant used profanity to him when she requested his presence following the incident with W.M. He further stated that she yelled at him in front of the entire management staff and that he requested that the conversation be moved to his office due to her profanity and aggressive nature. The supervisor acknowledged that appellant later apologized for her tone and the language content used while addressing him.

Appellant’s supervisor also stated that appellant’s allegation that W.M. was a bully and a menace had not been found as substantiated by the employing establishment. He noted that W.M. had been the consummate professional to her coworkers and managers and that she had been targeted by the conference litigation representative staff including appellant. The supervisor noted that appellant had not reported the remainder of her allegations regarding her coworkers to the employing establishment. He reported that an altercation did occur between C.C. and M.W. during lunch on March 12, 2014, but that there was no indication during the resulting investigation into this incident that appellant had overheard any conversations with J.D., C.C., and W.M. concerning her behavior. The supervisor concluded that the employing establishment was not aware of all interactions between employees and was not aware that appellant was ostracized by her coworkers.

On April 23, 2014 appellant’s supervisor controverted appellant’s claim and again asserted that she instigated the confrontation and that W.M. responded in an inappropriate manner. He concluded that both parties conducted themselves in a manner inappropriate for the workplace. The supervisor stated that the investigation revealed that appellant was the aggressor and “bully.” He alleged that she bullied him in the manner in which she requested his presence and that she used profanity. Appellant’s former supervisor confirmed that appellant had been verbally counseled regarding outbursts and her “bullying” personality in the office work space. The supervisor alleged that the employing establishment management did everything in its power to bring a quick resolution to the March 12, 2014 event and took appropriate action.

In a statement dated May 4, 2014, appellant stated that W.M.’s harassing conduct had been reported to management on numerous occasions and that no action had been taken against her. She alleged that she was afraid of W.M. with good reason.

By decision dated May 8, 2014, OWCP denied appellant's claim for a traumatic emotional condition. It noted that she had not provided any witness statements or other evidence corroborating her version of the events of March 12, 2014. OWCP stated that appellant's supervisor disputed appellant's version of events and asserted that she had instigated the confrontation. It found that she was not verbally abused, but that she was involved in a confrontation in which she was an active participant. OWCP further found that appellant had not established that the employing establishment failed to take appropriate actions against W.M. or committed error or abuse in the actions taken.

Following OWCP's May 8, 2014 decision, appellant submitted a statement from M.W. She alleged that W.M. was "mean and hateful." M.W. indicated that W.M. stated and did what she pleased and was not reprimanded by management. She indicated that she did not observe appellant's discussion with W.M., but believed that there was reverse discrimination tolerated at the employing establishment.

Appellant requested a review of the written record by an OWCP hearing representative on May 27, 2014. Dr. Neal L. Presant, a physician Board-certified in occupational medicine, submitted a report dated September 25, 2014 addressing her application for disability retirement to the Director of the Office of Civil Rights. He stated that appellant could not return to her current office under any circumstances. Dr. Presant stated, "There is even a potential threat of violence if she returned to that office." He stated that reassignment to a different office could be a viable option.

In a January 2014 statement, appellant submitted additional evidence and alleged that she witnessed an attack by W.M. on T.L. She stated that the current district manager, informed her on October 16, 2014 that he felt that W.M. attacked appellant in retaliation for reporting the attack on T.L. Appellant alleged that W.M. ensured that there were no witnesses to her altercations. She explained that on March 12, 2014 she took three letters to W.M.'s desk as all of the administrative assistants were using leave. Appellant stated that W.M. was filling in as an administrative assistant and as part of those duties was to take the mail out and bring the mail in. She stated that it was her job to put postage on all outgoing mail. Appellant placed the postage on three letters and took them to W.M.'s desk. She advised W.M. that the letters were on her desk. Appellant denied that she was rude, aggressive, or confrontational. She alleged that W.M. turned on her like a wild animal and that her face was so close to appellant that she could "smell her breath and her spittle was spewed all over [her] face." Appellant admitted that she used the word "shit" when she approached her supervisor and noted that her voice was likely raised. She stated that she apologized to her supervisor and others present. Appellant stated that there was no extensive investigation into the incident on March 12, 2013 and that she was never counseled for a "bullying attitude."

Appellant submitted an e-mail dated November 7, 2013 from B.N., who alleged that she was also attacked by W.M. B.N. alleged that their supervisor did not write the response letter to appellant's claim and had only worked at the employing establishment for two weeks prior to March 12, 2014.

In a letter dated November 25, 2014, the supervisor stated that appellant did not follow protocol by placing the mail in the mailroom so it could be taken to the mailbox, but instead

chose to take the mail to W.M. at the front desk and that this is what initiated the confrontation. He again stated that appellant used profanity when speaking with him and yelled at him. The supervisor stated that an extensive investigation was done by management as well as an independent outside investigator. He stated that there was an issue that seemed to be divided between different departments including the conference and litigation department and the special investigation department. He stated that B.N. e-mail illustrated the paranoia about the division fueled by appellant, B.N. and M.W. The supervisor stated, "It was determined that there is not an individual who can be held responsible for the event that occurred on March 12, 2014 as it appeared that both parties acted inappropriately."

In a report dated October 22, 2014, Dr. McKeever stated that he first treated appellant on August 6, 2009 and diagnosed post-traumatic stress disorder, severe depression with psychotic features, acute panic disorder, and atypical anxiety disorder as a result of work incidents that occurred at the time. Appellant filed and settled an Equal Employment Opportunity complaint regarding those events. Dr. McKeever stated that the events of March 12, 2014 aggravated her previously diagnosed conditions.

By decision dated December 17, 2014, an OWCP hearing representative reviewed all the evidence submitted and found that appellant had not established verbal abuse, discrimination, or harassment. She found that the facts did not support appellant's allegations and that she had not established any compensable factors of employment which could have contributed to her diagnosed emotional condition. The hearing representative stated that appellant established that she was involved in an altercation with a coworker on March 12, 2014, but that this incident did not give rise to compensable verbal abuse. She stated that appellant provided no evidence that W.M. was the aggressor or that incident occurred as alleged. The hearing representative also found that appellant's supervisor asserted that appropriate action was taken by the employing establishment. She found that appellant had not submitted any evidence that W.M. was violent or bullied coworkers in the past.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,² the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.³ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁴ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed

² 28 ECAB 125 (1976).

³ U.S.C. §§ 8101-8193.

⁴ See *Robert W. Johns*, 51 ECAB 136 (1999).

by the employing establishment or by the nature of the work.⁵ In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a person injury sustained in the performance of duty within the meaning of FECA. Thus, disability is not covered when it results from an employee's fear of a reduction-in-force nor is disability covered when it results from such factors such as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.⁶

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁷ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁸ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁹

The Board has recognized that verbal altercations when sufficiently detailed by the claimant and supported by evidence may constitute compensation employment factors.¹⁰ Not every statement uttered in the workplace will give rise to coverage under FECA.¹¹

Harassment is defined as a persistent disturbance, torment, or persecution, *i.e.*, mistreatment by coemployees or workers.¹² For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under FECA. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹³

⁵ *Cutler*, *supra* note 2.

⁶ *Id.*

⁷ *Charles D. Edwards*, 55 ECAB 258 (2004).

⁸ *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁹ *Roger Williams*, 52 ECAB 468 (2001).

¹⁰ *T.G.*, 58 ECAB 189 (2006).

¹¹ *V.W.*, 58 ECAB 428 (2007).

¹² *D.G.*, Docket No. 14-1796 (issued January 16, 2015); *Beverly R. Jones*, 55 ECAB 411 (2004).

¹³ *Alice M. Washington*, 46 ECAB 382 (1994).

ANALYSIS

Appellant has not attributed her emotional condition to her job duties as an employee under the precedent set forth in *Cutler*. Rather, she contends that she experienced stress as the result of a verbal altercation with a coworker, W.M., and she further alleged harassment, bullying, and gossip by coworkers.

Appellant has provided a detailed statement regarding the events of March 12, 2014 including W.M.'s tone, specific words, and physical actions regarding the disagreement on March 12, 2014. However, she has failed to provide any evidence corroborating her version of events. Appellant's supervisor at the employing establishment stated that an investigation supported that both employees acted inappropriately without providing any other details. The Board has held that being spoken to in a loud or harsh tone does not in itself constitute verbal abuse or harassment.¹⁴ The employing establishment's finding that both she and appellant acted inappropriately is insufficient to establish a compensable factor of employment. In a similar case, *M.L.*,¹⁵ the claimant alleged that a coworker yelled at her that she was not his boss, came close to her, and made gestures which she believed to be threatening. The Board found in that case that the evidence of record was insufficient to establish a compensable work factor based on verbal abuse as the only evidence of alleged verbal abuse consisted of the claimant's statements with no corroborative evidence. Likewise in this case, appellant has submitted no corroborative evidence that W.M. verbally abused her, made threatening gestures, or actually spat in appellant's face. Due to the lack of supportive factual evidence, the Board finds that appellant has not established a compensable factor of employment in this regard.

The remainder of appellant's allegations concern her perception that she worked in a hostile work environment and was harassed by fellow employees. For example, she listed numerous conflicts, listed statements that coworkers made behind her back, and asserted that she was subjected to bullying and gossip. Personal perceptions alone are insufficient to establish an employment-related emotional condition due to harassment.¹⁶ Furthermore, the Board has held that an emotional reaction to gossip in the workplace represents a personal frustration unrelated to one's duties and is not compensable.¹⁷ In *Gracie A. Richardson*,¹⁸ the claimant had become romantically involved with a coworker. She alleged, among other things, that she was devastated to think that coworkers were gossiping behind her back regarding her marital and other personal relationships. The Board found that an emotional reaction to gossip was not a compensable factor of employment.

¹⁴ *R.T.*, Docket No. 13-1665 (issued September 12, 2014).

¹⁵ Docket No. 12-738 (issued November 6, 2012).

¹⁶ *L.G.*, Docket No. 14-1054 (issued October 21, 2014).

¹⁷ *Supra* note 14.

¹⁸ 42 ECAB 850 (1991).

The Board finds that appellant has not submitted sufficient corroborative evidence to substantiate her allegations of verbal abuse or harassment. For these reasons she has not established a compensable factor of employment and thus did not meet her burden of proof.

Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.¹⁹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition on March 12, 2014 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁹ A.K., 58 ECAB 119 (2006).